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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 SHANNON WILLIAMS,) 1:16-cv-001540 DAD-MJS
12 Plaintiff,) **EX PARTE APPLICATION FOR**
13 v.) **EXTENSION OF DATES; ORDER**
14 OFFICER BAKER; WARDEN PAUL)
15 COPENHAVER; OFFICER BORJA; ASS.)
16 WARDEN SNYDER,)
Defendants.)
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18 Defendant Christopher Baker requests to further modify the discovery and dispositive motion
19 dates to allow for additional time to conduct focused discovery and take the deposition of Plaintiff
20 Shannon Williams (“Plaintiff”), a prisoner proceeding *pro se* regarding conduct while imprisoned at
21 United States Penitentiary Atwater, based on the pending motion for summary adjudication that may
22 eliminate one of the two causes of action. Defendant acted diligently in filing his dispositive motion and
23 good cause exists for approximately a ninety-day continuance of the current discovery and dispositive
24 motion filing dates to allow additional time for a ruling on the motion.

25 **GOOD CAUSE EXISTS TO CONTINUE THE DATES**
26 **BASED ON THE PENDING DISPOSITIVE MOTION**

27 Modification of a scheduling order requires a showing of good cause and due diligence. Fed. R.
28 Civ. Proc. 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). To

1 establish good cause, the party seeking the modification of a scheduling order must generally show that
2 even with the exercise of due diligence, they cannot meet the requirement of the order. *Id.* The court
3 may also consider the prejudice to the party opposing the modification. *Id.*

4 This lawsuit is a *Bivens*¹ action filed by Williams, a federal inmate proceeding *pro se*, against
5 former BOP Correctional Officer Christopher Baker, alleging a claim of excessive force and a separate
6 claim for retaliation arising from an incident on October 13, 2014, at United States Penitentiary Atwater.
7 ECF No. 12. On September 21, 2017, Defendant filed a potentially dispositive motion for summary
8 adjudication on the claim for retaliation because Williams never filed an administrative grievance with
9 the BOP alleging any purported retaliatory statements by Officer Baker. ECF No. 30. The briefing on
10 this motion was completed on November 20, 2017.² ECF Nos. 31, 34. Findings and Recommendations
11 were issued on February 28, 2018. ECF No. 38. Defendant Baker filed his response to the Findings
12 and Recommendations on March 14, 2018. ECF No. 39. The deadline for Williams to respond to
13 Defendant Baker's response expired on March 28, 2018, without any filing by Williams. ECF No. 38.
14 Currently, the matter is under submission and it is anticipated that after further Findings and
15 Recommendations are issued, the parties will evaluate the need to respond before the Findings and
16 Recommendations are sent to the District Judge for a final ruling. Accordingly, the current discovery
17 deadline of May 7, 2018, may expire prior to a final ruling on Defendant's motion for summary
18 adjudication of the retaliation claim for failure to exhaust.

19 After a ruling is made that could eliminate one of Williams' two causes of action, this will
20 narrow the written discovery as well as the areas to cover in Williams' deposition. Accordingly, the
21 parties resources are conserved by extending the current deadlines approximately ninety-days to August
22 6, 2018, for completing discovery and the dispositive motion filing deadline to November 19, 2018, to
23 allow for a ruling on the motion that can potentially remove one of the causes of action. *See United*

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26 ¹ *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

27 ² After Defendant answered the Complaint, a Scheduling Order was issued setting the dates of
28 September 28, 2017 for an exhaustion motion, February 28, 2018 as the discovery deadline and May
7, 2018 for the dispositive motion filing deadline. ECF No. 27.

1 *States v. W.R. Grace*, 526 F.3d 499, 509 (9th Cir. 2008) (court's inherent power to control its docket).³
2 Additionally, no prejudice will be suffered by this extension of approximately ninety-days for the
3 discovery and dispositive motion deadlines as the operative pleading was only recognized as of May 5,
4 2017, and no trial date has been set in this action.⁴ ECF No. 23.

5 Accordingly, for good cause showing, including the saving of time and resources in allowing
6 additional time for a ruling on the pending motion for summary adjudication, Defendant requests the
7 discovery and dispositive motion filing deadlines be extended approximately ninety-days.

8 Respectfully submitted,

9 Dated: April 5, 2018

McGREGOR W. SCOTT
United States Attorney

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11 By: /s/Alyson A. Berg
12 ALYSON A. BERG
13 Assistant U.S. Attorney
Attorneys for Defendant

14 **PROPOSED ORDER**

15 For good cause showing, the discovery deadline is now continued to August 6, 2018, and the
16 dispositive motion filing deadline to November 19, 2018.

17 IT IS SO ORDERED.

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19 Dated: April 6, 2018

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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25 ³ In an abundance of caution, Defendant noticed the deposition of Plaintiff for May 3, 2018 in
compliance with the Court's current order. .

26 ⁴ Williams is serving a 480-month aggregate sentence for one count of conspiracy to distribute and
27 possession with intent to distribute marijuana in violation of 21 U.S.C. § 846 and one count of money
28 laundering in violation of 18 U.S.C. § 1956(h). He is eligible for release for good time conduct on
April 16, 2044.

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